87-596

No. .....

Supreme Court, U.S.
FILED
OCT 14 1987
JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1987

—o—

JOHN L. CHEEK,

Petitioner,

vs.

JOHN DOE, TOM LUDWIG,
AND JAMES R. STARKEY,

Respondents.

—o—

On Writ of Certiorari to the Court of Appeals of the United States for the Seventh Circuit

—o—

PETITION FOR WRIT OF CERTIORARI

—o—

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QUESTIONS PRESENTED

1. Did the court of appeals err in upholding the district court order that jurisdiction over the defendants did not exist when they appeared through their counsel and did not allege that they didn't receive the summons and complaint?

2. If district court did not have jurisdiction over the defendants, did the courts below err when they ordered petitioner to pay costs and a sanction for exercising his 1st Amendment right to petition government for a redress of grievances?

3. Did the court of appeals err by failing to rule on the issue of social security when a white male Christian ask the question whether social security was compulsory for him?

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DENIAL BELOW

The District Court judgment of dismissal is reproduced as Appendix "A1", and the order of Judge Duff is reproduced as Appendix "A2".

The Court of Appeals judgment affirming in part and reversing in part is reproduced as Appendix "B1", the opinion of the judges is reproduced as Appendix "B2", the correction to opinion is reproduced as Appendix "B3", and order denying petition for rehearing is reproduced as Appendix "B4".

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GROUNDS OF JURISDICTION OF SUPREME COURT

This writ arises from the order of the Court of Appeals entered on July 24, 1987.

The jurisdiction of the Court is invoked pursuant to Art. III, Secs. 1 & 2 of the Constitution and 28 U.S.C. Sec. 1254(1) if required.

———o———

APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTES

Art. I, Sec. 2, cl. 3 states in part:

> Representatives and direct Taxes shall be apportioned . . .

Art. I, Sec. 8, cl. 1 states in part:

> Congress shall have Power to lay and collect Taxes, Duties, Imposts, and Excises . . . but all Duties, Imposts, and Excises shall be uniform . . .

Art. I, Sec. 9, cl. 4 states in part:

> No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration . . .

Amendment 16 of the Constitution states in part:

> Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States . . .

28 U.S.C. Rule 11 states in part:

> The court, upon motion or upon its own initiative, shall impose . . . an appropriate sanction . . .

———o———

STATEMENT OF THE CASE

An action at law to reclaim property (money withheld for alleged social security taxes and income taxes) was filed against John Doe, an unknown IRS agent who intimidated American Airlines into withholding without a court order; Tom Ludwig, an IRS agent; and James R. Starkey, IRS District Director. Ludwig was served in his IRS office and Starkey was served in his IRS office when William Arnold and Mary Doherty signed respectively on the line marked "left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age . . ." Attorneys from the Dep. of Justice entered appearance and defended the individuals by filing a motion to dismiss. Improper service was alleged, but there was no allegation that Ludwig and Starkey did not receive the summons and complaint. Petitioner's facts included his Revocation and Rescission of his Social Security Number and a letter from the Commissioner of Social

Security which stated no social security number was required by the administration. Judge Duff dismissed for improper service, stated the suit was frivolous, and ordered costs of $1,500 and a $10,000 sanction under Rule 11.

This case arises from the judgment of the Court of Appeals which reduced the sanction imposed below to $5,000 but imposed a sanction of $1,500 for bringing a frivolous appeal. Said appeal consisted of 10 questions, but the Court of Appeals elected to limit review to the sanction's question and affirm dismissal for improper service. Petitioner remains concerned that the Court of Appeals didn't understand his suit because it incorrectly cited 42 U.S.C. Sec. 1983 until appellant explained their error in his MOTION FOR REDETERMINATION.

The present petition is limited to questions on jurisdiction, sanctions, and social security because the petitioner was indicted for alleged tax violations on Mar. 9, 1987.[1]

———o———

[1]Petitioner was indicted for 7 counts on Mar. 9, 1987 for years 1980-1983 without being contacted by the grand jury and without being notified that he was under criminal investigation. Petitioner was subsequently indicted for willful failure to file for years 1984-1986 without notice of the hearing or grand jury contact on Sep. 14, 1987. Trial has been tentatively set for 10 tax counts on Oct. 19, 1987.

Petitioner alleges bad faith by the government. He did not have time to present newly discovered evidence in the form of 4 standing documents which were executed, recorded, and planned for presentation at oral argument in the court of appeals. Denial of oral argument was not learned until the opinion was issued.

SUBSTANTIALITY OF FEDERAL QUESTION

If the court has jurisdiction to issue an opinion, the question of whether a white male Christian can be compelled to pay social security tax is squarely before the court—a question of 1st impression for adjudication from the standing of the individual. If the question of social security is not before the court, the question is whether the district court had authority to issue a judgment for costs and sanctions without jurisdiction over the defendants.

———o———

ARGUMENT

The courts below should have made an adjudication that was logical, consistent, and just in which it was ruled that either the district court didn't have jurisdiction over the defendants or it addressed the merits of the case. If the district court didn't have jurisdiction over the defendants, then the court had no authority to award costs and sanctions. *Maxfield's Lessee v. Levy*, 4 U.S. 308 at 315; *Kendall v. The U.S.*, 12 Pet. (37 U.S.) 524, 623; and *Smith v. Whitney*, 116 U.S. 167, 175.

If the district court did have jurisdiction because the defendants appeared and plead through their counsel, then the courts should address the merits. *Rhode Island v. Mass.*, 12 Pet. (37 U.S.) 657, 720; and *Jones v. Andrews*, 10 Wall. (77 U.S.) 327, 332. The case did not fail under the doctrine of stare decisis, and the 3 unanimous Supreme Court cases that control constitutional taxation were cited. *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1; and

Stanton v. Baltic Mining Co., 240 U.S. 103; unanimously held that the 16th Amendment, as correctly interpreted, and the income tax are constitutional because they are restricted to the classification of indirect taxes. *Flint v. Stone Tracy Co.*, 220 U.S. 107, instructs that *indirect* taxes are never upon any kind of property, money or otherwise, but only upon taxable *activities,* in which the resulting income is merely referred to for the purpose of *measuring* the tax on the taxable activity. "Income" taxes are only *named* such because the income connected with the taxable activity is simply and conveniently used as the standard or the yardstick by which the tax upon said activity is measured. Of course, under the Internal Revenue Code, an activity must be taxable for *revenue* purposes, as opposed to strictly regulatory purposes.

"Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed." Art. I, Sec. 17 of the N. Y. Constitution. "All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness." Art. I, Sec. 1, Illinois Constitution. "Compensation for labor cannot be regarded as profit". *Oliver v. Halstead,* 86 S.E.2d (Va.) 858 at 859. Working in the private sector is an inalienable and fundamental right, and an individual can't be taxed for the privilege of existing. *Prudential Ins. Co. v. Cheek,* 259 U.S. 530, 536; and *Redfield v. Fisher,* 292 P. (Or.) 813 at 819 (1930). Wages are "a specialized type of property presenting distinct problems in our economic system." *Sniadach v. Family Finance Corp.,* 395 U.S. 337 at 340.

The record below showed why social security is voluntary if a white male Christian has the correct standing and

status. In *Davis v. Boston & M.R. Co.*, 89 F.2d 368; and *Davis v. Edison Electric Ill. Co.*, 89 F.2d 393; the 1st circuit held that social security was unconstitutional as an excise tax because it violated Amendment 10 of the Constitution. The Supreme Court correctly held that social security was constitutional as an excise tax on employers; however, the *Davis* cases were never overruled in holding that the *employee part* of social security violated Amendment 10 of the Constitution. See *Helvering v. Davis*, 57 S.Ct. 904, 907. There was nothing in the record to show that social security was constitutional as a compulsory tax on a white male who doesn't want to belong to social security and has revoked and rescinded his social security number.

———o———

CONCLUSION

Either a first impression question of social security or a question of sanctions without jurisdiction is squarely before the court, and petitioner can't be held to the standards of a lawyer. See *Haines v. Kerner*, 92 S.Ct. 594, 596; and *Price v. Johnson*, 334 U.S. 266, 292.

A layman should not be punished for exercising his Amendment 1 right to petition government. "It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." *Boyd v. U.S.*, 116 U.S. 616 at 635.

Respectfully submitted,

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APPENDIX "A1"

UNITED STATES DISTRIICT COURT
NORTHERN DISTRICIT OF ILLINOIS
Eastern Division

John L. Cheek

V.

JUDGMENT IN A CIVIL CASE

John Doe, Tom Ludwig and James R. Starkey

CASE NUMBER 85 C 10351

[ ] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[X] Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that defendants' motion to dismiss is granted. Plaintiff is ordered to pay the United States $1,500.00 in costs and attorneys' fees, an amount this court finds reasonable, and $10,000.00 as a sanction under Rule II for bringing this action in bad faith.

June 16, 1986
Date

H. Stuart Cunningham
Clerk

/s/ Claudia M. Flagg
(By) Deputy Clerk

APPENDIX "A2"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN L. CHEEK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 85 C 10351
	)	
JOHN DOE, TOM LUDWIG, and JAMES R. STARKEY,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff challenges the constitutionality of the income tax and seeks reimbursement for taxes withheld from his wages. The case is before the court on defendants' motion to dismiss and for sanctions.

Plaintiff John L. Cheek received wages from American Airlines in the amount of $67,221.61 in 1983 and $75,145.75 in 1984. In January, 1985, he mailed a claim to defendant James R. Starkey, District Director of the Internal Revenue Service ("IRS"), for the recovery of income taxes of $22,555.48, and social security taxes of $2,532.60 withheld from his wages in 1984. In April, 1985, plaintiff mailed a claim to defendant Thomas Ludwig, an IRS Revenue Agent, for the recovery of income taxes of $2,879.66 and social security taxes of $2,391.90 withheld from his wages in 1983. Plaintiff's claims were never

honored; consequently, he filed this suit against Starkey and Ludwig in their individual capacities.

Plaintiff argues that the withholding of income and social security taxes amounted to an unconstitutional taking of property and that his wages are not taxable income. He requests the court to order Starkey and Ludwig to refund the amounts withheld and to assess punitive damages. Defendants move to dismiss the suit and to impose sanctions, costs and attorneys fees against plaintiff.

Because plaintiff sues the defendants as individuals, they must be served with process pursuant to Rule 4(d)(1) of the Federal Rules of Civil Procedure. Rule 4(d)(1) requires a copy of the summons and complaint to be delivered to the plaintiff personally or left "at his dwelling house or usual of abode with some person of suitable age or discretion" who resides there. Plaintiff did not comply with these requirements, and instead served the complaint by leaving a copy with employees at the IRS district office in Chicago.

Although pro se pleadings are generally held to less stringent standards, *Haines v. Kerner,* 404 U.S. 519, 520 (1972), a pro se plaintiff still must properly serve the defendant. *Kiley v. Kurtz,* 533 F. Supp. 465, 467 (D. Co. 1982). The fact that defendants may have received actual notice of this suit does not cure insufficient service. *Rabiolo v. Weinstein,* 357 F.2d 167, 168 (7th Cir. 1966). *See also Cameron v. IRS,* 773 F.2d 126 (7th Cir. 1985) (affirming dismissal of pro se complaint for insufficient service).

Regardless of the sufficiency of service, however, this case is frivolous on the merits. The constitutionality of

the income tax laws, enacted pursuant to the Sixteenth Amendment, has long been established. *Brushaber v. Union Pacific R.R.*, 240 U.S. 1 (1915); *United States v. Thomas*, No. 85-2120, slip op. (7th Cir. April 17, 1986). Moreover, the Seventh Circuit has emphatically stated that wages are taxable income. *Granzow v. Commissioner*, 739 F.2d 265, 267 (7th Cir. 1984); *United States v. Koliboski*, 732 F.2d 1328, 1328 n.1 (7th Cir. 1984).

By signing a complaint, a plaintiff certifies "that to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." Fed. R. Civ. P. 11. Rule 11 is designed to discourage dilatory or abusive tactics and lessen frivolous claims by requiring the court to assess expenses and attorneys fees against litigants, including pro se litigants, who act in bad faith in instituting or conducting litigation. Fed. R. Civ. P. 11, Advisory Committee Note.

This circuit has repeatedly recognized the propriety of assessing attorneys fees and costs in cases where parties claim not to owe income taxes or file frivolous tax appeals. *Cameron v. IRS*, 773 F.2d at 129; *Granzow v. Commissioner*, 739 F.2d at 269; *United States v. Ekblad*, 732 F.2d 562, 563 (7th Cir. 1984). There is no good faith basis for plaintiff's arguments. Sanctions are particularly appropriate here in light of the fact that plaintiff has unsuccessfully raised essentially identical arguments in a previous action before this court. *See Shaut v. United States*, 585 F. Supp. 137 (N.D. Ill. 1984).

Defendants seek sanctions in the amount of their costs and attorneys' fees, which total $1,500, and a $10,000 fine. In assessing costs and attorneys' fees against a tax protester nearly two years ago, this circuit warned that "[a]busers of the tax system have no license to make irresponsible demands on the Courts of Appeals to consider fanciful arguments put forward in bad faith. In the future we will deal harshly with frivolous tax appeals and will not hesitate to impose even greater sanctions under appropriate circumstances." *Granzow v. Commissioner,* 739 F.2d at 270. That warning spoke equally to those who file frivolous challenges to the tax system in the District Courts. *See Sloan v. United States,* 621 F. Supp. 1072 (N.D. Ind. 1985); *Snyder v. Internal Revenue Service,* 596 F. Supp. 240 (N.D. Ind. 1984).

Plaintiff's repeated abuse of the judicial system for the pursuit of frivolous cases entirely justifies the severe sanction sought by the defendants. The motion to dismiss is granted. Plaintiff is ordered to pay the United States $1,500 in costs and attorneys' fees, an amount this court finds reasonable, and $10,000 as a sanction under Rule 11 for bringing this action in bad faith. IT IS SO ORDERED.

ENTER:

/s/ Brian Barnett Duff
JUDGE UNITED STATES
DISTRICT COURT

DATE: June 16, 1986

APPENDIX "B1"

JUDGMENT—WITHOUT ORAL ARGUMENT
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago, Illinois 60604

June 5, 1987.

Before

Hon. WALTER J. CUMMINGS, Circuit Judge
Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge

JOHN L. CHEEK, Plaintiff-Appellant,	) Appeal from the United States District Court for
No. 86-2155 vs.	) the Northern District of Illinois,
JOHN DOE, TOM LUDWIG, and JAMES R. STARKEY, Defendants-Appellees.	) Eastern Division.) No. 85 C 10351) Judge Brian B. Duff

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED IN PART AND REVERSED IN PART, with sanctions, in accordance with the opinion of this Court filed this date. In lieu of costs and attorney's fees, sanctions in the amount of $1,500.00 are imposed upon plaintiff-appellant for the bringing of this frivolous appeal.

APPENDIX "B2"

In the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 86-2155
JOHN L. CHEEK,

Plaintiff-Appellant,

v.

JOHN DOE, TOM LUDWIG, and
JAMES R. STARKEY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 85 C 10351—Brian Barnett Duff, *Judge.*

SUBMITTED MARCH 10, 1987*—DECIDED JUNE 5, 1987

Before CUMMINGS, CUDAHY, and EASTERBROOK, *Circuit Judges.*

PER CURIAM. John L. Cheek appeals from the dismissal of his action brought under 42 U.S.C. § 1983 and the district court's imposition of an $11,500 sanction under Rule 11 of the Federal Rules of Civil Procedure. For the reasons given, we affirm the dismissal, reduce the amount of the sanction imposed by the district court to $5,000, and impose sanctions of $1,500.

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." *See* Fed. R. App. P. 34(a); Circuit Rule 34(f). The plaintiff-appellant has filed such a statement and requested oral argument. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

A.

Cheek sued three employees of the Internal Revenue Service under § 1983: a district director of the IRS in Chicago, an IRS agent in Schaumburg, and an unknown IRS agent "who intimidated [Cheek's employer] into giving plaintiff's compensation for labor, property, to the IRS without constitutional authority." He sought reimbursement of social security taxes and income taxes withheld from his wages by his employer, American Airlines, in 1983 and 1984, of slightly more than $30,000. Cheek's wages as a pilot for American totaled over $140,000 for 1983 and 1984. According to the district court's order, Cheek argued "that the withholding of income and social security taxes amounted to an unconstitutional taking of property and that his wages were not taxable income." Cheek's complaint was dismissed for failure to properly serve the defendants pursuant to Rule 4(d)(1) of the Federal Rules of Civil Procedure; Cheek served the defendants by leaving a copy of the complaint with employees at IRS offices rather than at their homes.

The district court noted that Cheek's claim was frivolous on the merits and that there was no good faith basis for his arguments. The court further found that the case was an appropriate one for sanctions because Cheek had "unsuccessfully raised essentially identical claims in a previous action before this court."

B.

The only nonfrivolous argument raised on appeal concerns the imposition of sanctions.[1] Unfortunately, only

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[1] Cheek maintains that defendants were properly served, yet his own brief indicates that he delivered copies of the complaint to IRS offices in Chicago and Schaumburg and the U.S. Attorney's office in Chicago.

two pages of Cheek's 45-page opening brief address this argument.[2] To the extent that he does address the issue, he incorrectly maintains that Rule 11 does not permit the imposition of a "penalty" other than reasonable expenses, including attorney's fees, and that he has an absolute right, through the medium of this lawsuit, to petition the government for the redress of grievances.

First, the language of Rule 11 itself permits the imposition of "an appropriate sanction," while the Advisory Committee Notes indicate that the rule is designed to punish and deter frivolous suits and to discourage dilatory and abusive tactics. We have previously stated that a fine may be an appropriate sanction, *Glick v. Gutbrod*, 782 F.2d 754, 756 n.3 (7th Cir. 1986); *Hilgeford v. Peoples Bank*, 776 F.2d 176, 177-78 (7th Cir. 1985), *cert. denied*, 106 S.Ct. 1644 (1986), and *pro se* litigants are not exempt. Fed. R. Civ. P. 11 (applies to attorneys and parties); *Reis v. Morrison*, 807 F.2d 112 (7th Cir. 1986). Second, as we have previously held, "there is no constitutional right to bring frivolous lawsuits." *Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68, 72 (7th Cir. 1986), [quoting *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 743 (1983)].

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[2] In reply, Cheek cites *Donaldson v. Clark*, 786 F.2d 1570 (11th Cir. 1986), an Eleventh Circuit case requiring a court imposing a fine as a Rule 11 sanction to follow the procedures (notice of conduct subject to sanction, time to prepare a defense, and a hearing) required in criminal contempt proceedings under Fed. R. Crim. P. 42(b). *See also, Cotner v. Hopkins*, 795 F.2d 900 (10th Cir. 1986) (Rule 42(b) protections required where failure to comply with court order partly responsible for imposition of sanctions). However, the *Donaldson* opinion has been vacated, pending rehearing *en banc*. *Donaldson v. Clark*, 794 F.2d 572 (11th Cir. 1986). In fact Cheek did not respond to the government's motion for costs, attorney's fees, and sanctions.

The point which gives us pause here is the amount of the sanction imposed, $11,500 (including an award of $1,500 for costs and attorney's fees). We are also concerned by the lack of reasons supplied by the district court for imposing such an admittedly severe sanction; apparently the court gave great weight to the fact that Cheek had raised similar claims in an earlier suit, *Schaut v. United States,* 585 F. Supp. 137 (N.D. Ill. 1984).[3]

The district court's determination of an appropriate sanction should not be disturbed absent an abuse of discretion, *Hilgeford,* 776 F.2d at 179; *In re TCI Limited,* 769 F.2d 441 (7th Cir. 1985); however, we conclude that the district judge abused his discretion by imposing such severe sanctions against a p*ro se* litigant, particularly without a sufficient statement of reasons.

In arguing that the fine was not an abuse of discretion, the government points to a number of relevant factors. An intent to harass may be inferred from the fact that Cheek sued employees of the IRS in their individual capacities. Cheek, as the judge noted, had previously raised and lost similar claims. The government also calls our attention to the fact that taxpayers who press frivolous claims in Tax Court may be assessed fines of up to $5,000 under 26 U.S.C. § 6673, maintaining that a substantial

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[3] In *Schaut v. United States,* Cheek was one of five plaintiffs seeking injunctive and declaratory relief, claiming wages are not taxable under the Sixteenth Amendment and thus withholding and payment of taxes with respect to wages violated their Fifth Amendment due process rights. Although *Schaut* was decided on other grounds, the district court expressly noted that the plaintiffs' wages are not income argument "has repeatedly been held to be without merit." 585 F. Supp. at 139.

fine is necessary to deter Cheek from filing similar suits, and $10,000 is not unreasonable given Cheek's annual income. (The government asked for this amount.) While these factors may justify the imposition of sanctions, we note as an initial matter that they come after the fact, and with the exception of a reference to the previous suit, were apparently not relied on by the district court. Moreover, we find these factors not sufficiently compelling to justify the unprecedented amount imposed.[4] Absent other factors not present here, the $11,500 sanction imposed constitutes an abuse of discretion. We regard $5,000, the maximum amount the Tax Court has the authority to impose as a penalty, as suggesting the maximum sanction appropriate in a case of this kind. *See Coleman*, 791 F.2d at 70 (affirming Tax Court penalty of $5,000). We are inclined to adhere to this amount as a ceiling on penalties to be imposed by the district courts in cases of this sort absent the most extraordinary circumstances (which are not present here). Nor do we intend to suggest in any way that $5,000 is to be routinely or regularly imposed in similar cases, whether *pro se* or not. In fact, $5,000 is much more than has ever before been imposed in this circuit in this sort of case. But we also hasten to add that we reserve the right in the future to approve the assessment of whatever damages may become necessary to protect the judicial system against serious abuse, should the

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[4] Cheek is not a stranger to this court. In *Cheek v. IRS*, 703 F.2d 271 (7th Cir. 1983), he sued the Internal Revenue Service and its agents under the Privacy Act and the Freedom of Information Act. In *Cheek v. Beck*, 805 F.2d 1083 (7th Cir. 1986) (unpublished order), *cert. denied*, 107 S.Ct. 1605, he sued Cook County officials for payment, in gold or silver, for his service as a juror in Cook County. He was not sanctioned in either suit.

public interest demand. For the present we think $5,000 is enough—even in egregious cases like this one.

C.

The government has asked us to impose sanctions for the bringing of this frivolous appeal. Sanctions under Rule 38 may be awarded where the appeal is both frivolous and an appropriate case for sanctions; because this case meets both criteria, we impose sanctions in the amount of $1,500 in lieu of costs and attorney's fees. *See Coleman*, 791 F.2d at 73. There can be little doubt that this is a frivolous appeal, *id.* at 72; *Cameron v. IRS*, 773 F.2d 126, 129-30 (7th Cir. 1985), notwithstanding the fact that one nonfrivolous issue was raised.[5] *Grandado v. Commissioner of Internal Revenue*, 792 F.2d 91, 94 (7th Cir. 1984) (argument that wages are not income justifies imposition of sanctions even though one nonfrivolous argument is also raised), *cert. denied*, 107 S.Ct. 1378 (1987). Cheek could presumably have brought a nonfrivolous appeal of the propriety of the fine and its amount. But as we have said, the bulk of his brief on appeal is devoted to such arguments as wages are not income, the Sixteenth Amendment was improperly ratified, and the social security and income taxes are unconstitutional takings. There can be equally little doubt that this is an appropriate case for sanctions. Despite the rejection of similar arguments in previous litigation and below, Cheek has insisted on pressing them on appeal. Further, his efforts to distinguish the authority

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[5] If indeed Cheek can be said to have placed in issue the *amount* of the Rule 11 sanction. His argument that a penalty, in addition to attorney's fees and costs, may not be awarded under Rule 11 is frivolous.

relied on by the district court and the government indicate that he is at least passing familiar with our holdings in this area. Thus, notwithstanding that we reduce the sanction imposed below to $5,000, we also impose sanctions of $1,500 for the bringing of this frivolous appeal.

The decision of the district court is affirmed in part and reversed in part.

A true Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX "B3"

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

July 10, 1987.

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

JOHN L. CHEEK, Plaintiff-Appellant, No. 86-2155 v. JOHN DOE, TOM LUDWIG, and JAMES R. STARKEY Defendants-Appellees.	) Appeal from the) United States District Court for the) Northern District) of Illinois, Eastern) Division.)) No. 85 C 10351) Brian Barnett) Duff, *Judge*.

The opinion in the above-entitled case issued June 5, 1987, is corrected as follows:

At page 2, line 2 of the slip opinion, replace "action brought under 42 U.S.C. § 1983" with "*Bivens*-type action, *see Bivens v. Six Unknown Federal Narcotics Agents,* 403 U.S. 388 (1971)," and, at page 2, Part A., line 2, delete "under § 1983".

APPENDIX "B4"

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

July 24, 1987.

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

JOHN L. CHEEK, Plaintiff-Appellant,	) Appeal from the) United States Dis-) trict Court for the) Northern District
No. 86-2155 v.	) of Illinois, Eastern) Division.
JOHN DOE, TOM LUDWIG, and JAMES R. STARKEY, Defendants-Appellees.	) No. 85 C 10351) Brian Barnett) Duff, *Judge*.

ORDER

Treating appellant's "Motion for Redetermination" as a petition for rehearing, all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.